BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

JUANITA N. VICK	)	
Claimant	)	
	)	
VS.	)	
	)	
LATOUR MANAGEMENT, INC.	)	
Respondent	)	Docket Nos. 1,007,896 &
	)	1,021,270
AND	)	
	)	
HIGHLANDS INSURANCE CO.	)	
KS RESTAURANT & HOSPITALITY ASSOC.	)	
SELF INSURANCE FUND	)	
Insurance Carriers	)	

ORDER

Respondent and one of its insurance carriers, Highlands Insurance Company (Highlands), appeal from a preliminary hearing Order entered by Administrative Law Judge John D. Clark on April 26, 2005, ordering medical treatment be provided by respondent and Highlands.

ISSUES

Claimant alleged she suffered injuries while working for respondent on September 20, 2002. That accident is the subject of Docket No. 1,007,896. She subsequently returned to work and alleges she suffered a series of aggravations and injuries "each working day from 9-7-04 to 11-19-04"[1]. This is the subject of Docket No. 1,021,270. Both accidents occurred during claimant's employment with respondent. The issue on appeal is whether claimant suffered one accident or two. Stated another way, the issue is whether claimant's current need for medical treatment is due to the natural and probable consequence of the accidental injury claimant suffered while working for respondent during Highlands' period of coverage or whether, instead, claimant suffered a new series of accidents and injuries through November 19, 2004 and, therefore during the period that respondent's insurance coverage was with the subsequent insurance carrier, Kansas Restaurant and Hospitality Association Self Insurance Fund (Fund). Both of the alleged dates of accident occurred while claimant was working for respondent.

In their brief to the Board, respondent and Highlands admit "Highlands is the responsible carrier for the 9/20/02 injury" but deny claimant's "current low back and hip

[1] Application for Hearing (filed Jan. 31, 2005).

complaints are the natural result of the 9/20/02 injury."[2] Although Highlands couches this issue in terms of whether claimant suffered a new accident and injury, thereby relieving Highlands of liability, what is really disputed is which insurance carrier or carriers should be responsible for paying the cost of claimant's medical treatment.

Respondent and Fund argue claimant suffered "only an increase in her symptoms, and presents no sufficient evidence to establish claimant sustained any new injury requiring additional medical care and treatment, but the medical care and treatment relates back to the original injury and consequences of the original injury".[3] Respondent and Fund request the ALJ's Order be affirmed.

Claimant contends "[t]he [p]reliminary [h]earing was not a dispute as to whether she needs additional medical treatment but, as to which carrier would be responsible for those expenses. Accordingly, the claimant takes no position as to which carrier is responsible".[4]

The threshold question is whether this appeal raises an issue which the Board has jurisdiction to review on an appeal from a preliminary hearing order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Board concludes that the issues raised on appeal are not jurisdictional issues. As a consequence, the Board does not have jurisdiction to review those issues at this stage of the proceedings.

On an appeal from a preliminary hearing order, the Board is limited to review of allegations that the ALJ exceeded his/her jurisdiction.[5] This includes review of issues identified in K.S.A. 44-534a as jurisdictional issues. On the current appeal, there is no dispute that claimant's current need for medical treatment is the result of an accidental injury or injuries that arose out of and in the course of her employment with respondent. The only question is whether there was one accident or two and, as a result, which insurance carrier is liable for benefits. Highlands contends the ALJ erred by not finding a subsequent series of accidents. This contention does not give rise to one of the issues identified in K.S.A. 44-534a and does not otherwise constitute an allegation that the ALJ exceeded his jurisdiction.[6]

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[2] Brief (filed July 5, 2005). Respondent and Highlands filed a Motion to File Brief Out of Time on July 5, 2005. There being no objection to this request, respondent's and Highlands' motion is granted.

[3] Respondent and Fund's Brief at 2 (filed Jun. 9, 2005).

[4] Claimant's Brief at 1 (filed Jun. 23, 2005).

[5] K.S.A. 44-551.

[6] *See Carpenter v. National Filter Service*, 26 Kan. App. 2d 672, 994 P.2d 641 (1999); *American States Insurance Company v. Hanover Insurance Company*, 14 Kan. App. 2d 492, 794 P.2d 662 (1990).

Highlands alleges that the ALJ exceeded his jurisdiction. The Board disagrees. The ALJ has jurisdiction over the respondent and, therefore, over its insurance carriers.[7] Furthermore, K.S.A. 44-534a grants an ALJ the authority to award medical and temporary total disability compensation at a preliminary hearing after "a preliminary finding that the injury to the employee is compensable."

The Board was presented with a similar issue in the case of *Ireland*,[8] where, in holding that the Board was without jurisdiction to consider the issue of which insurance carrier should pay for the preliminary hearing benefits, we said:

> Furthermore, it is inconsistent with the intent of the Workers Compensation Act for a respondent to delay preliminary hearing benefits to an injured employee while its insurance carriers litigate their respective liability. The employee is not concerned with questions concerning this responsibility for payment once the respondent's general liability under the Act has been acknowledged or established. *Kuhn v. Grant County*, 201 Kan. 163, 439 P.2d 155 (1968); *Hobelman v. Krebs Construction Co.*, 188 Kan. 825, 366 P.2d 270 (1961).

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the appeal of the preliminary hearing Order entered by Administrative Law Judge John D. Clark on April 26, 2005, should be, and the same is hereby, dismissed.

IT IS SO ORDERED.

Dated this ____ day of August 2005.

_____
BOARD MEMBER

c: Gary K. Albin, Attorney for Claimant
Seth G. Valerius, Attorney for Respondent and Highlands Ins. Co.
Jeffery R. Brewer, Attorney for Resp. & KS Restaurant & Hospit. Assoc. Self Ins. Fund
John D. Clark, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

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[7] *See* K.S.A. 40-2212; *Landes v. Smith*, 189 Kan. 229, 368 P.2d 302 (1962).

[8] *Ireland v. Ireland Court Reporting*, WCAB Docket Nos. 176,441 & 234,974, 1999 WL 123220 (Kan. WCAB Feb. 22, 1999).